

Service Date: February 1, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF COLUMBIA HEIGHTS	)	UTILITY DIVISION
WATER COMPANY, Complaints Concerning	)	DOCKET NO. D98.10.246
Adequacy of Service and Investigation of	)	
Transfer of Ownership	)	ORDER NO. 6132a

ORDER ON RECONSIDERATION

On January 8, 1999, Brian Hattem, a customer of Columbia Heights Water Company (CHWC) and a participant in the above-entitled matter, filed before the Public Service Commission (PSC) a request for reconsideration of PSC Order No. 6132. Order No. 6132, issued in this matter by the PSC on December 30, 1998, resolves pending questions pertaining to ownership of CHWC, identifies problems pertaining to both the adequacy of utility service provided by CHWC and the general operations of CHWC as a public utility, and establishes a means through which proceedings will remain open for the purpose of monitoring CHWC's efforts to correct those problems.

On reconsideration Hattem argues generally that the PSC's order is a rush judgment without formal facts. The PSC disagrees. The PSC did attempt to process and decide the matter in an expedited fashion. In part, this approach was based on customer requests. The CHWC customers, including Hattem, expressed in prehearing communications to the PSC a sense of urgency regarding a PSC hearing and conclusion to this matter. Although proceedings may have been expedited, the resulting PSC judgment is based on formal facts, which are those facts submitted on the record at the PSC's formal public hearing on the matter, held December 14, 1998.

Hattem also argues that the original sale of CHWC from William Gress to Larry Streeter, Sr., was an illegal sale. Therefore, according to Hattem, the illegal sale should negate any subsequent sale, including the recent sale to Larry Streeter, Jr. Except in regard to the PSC's role in reviewing the sale, the sale of CHWC from Gress to Streeter, Sr., is apparently a legal sale. To the PSC's knowledge the sale has not been contested from any aspect unrelated to laws administered by the PSC. In regard to the laws administered by the PSC and the PSC's role in reviewing the sale, if the sale of CHWC from Gress to Streeter, Sr., was illegal at one time, it is no longer illegal, as the PSC has now approved the sale (i.e., through Order No. 6132).

Pertaining to the sales of CHWC Hattem also argues that no financial records or plans were submitted to or reviewed by the PSC. That is true. Hattem suggests that it is ridiculous that the PSC did not do an extensive review of the requested transfers of CHWC. The PSC disagrees. The PSC has discretion in reviewing sales of public utilities and, within that discretion, may lawfully determine whether or not review requires financial records and plans. The circumstances surrounding CHWC ownership and public utility operations and the CHWC sales simply do not justify extensive review of the sales.

One circumstance is that those CHWC customers choosing to make a statement at hearing regarding the ownership of CHWC stated that the question of who owns the system is not a concern so long as the service provided is adequate. In regard to these statements Hattem argues that such statements should not have been taken literally. The PSC disagrees. The witness statements at hearing were sworn formal statements, which are to be taken literally. Hattem made such statement regarding ownership, likely more than once, with no accompanying indication that such statement was not to be taken literally.

There are also other circumstances. One is that, in comparing the only two owners which the PSC would have authority to choose at the present time (i.e., Larry Streeter, Jr., or the Estate of Larry Streeter, Sr.) Larry Streeter, Jr., is clearly the better choice. Another is that the financial soundness of CHWC is closely tied to issues in the probate of Larry Streeter, Sr.'s, estate. It would have been impossible to conduct an independent review without becoming enmeshed in the probate. That would have been unnecessary and would have caused additional delay.

Hattem also states that he was offended by the PSC staff attorney dismissing the CHWC customers and talking with the CHWC owners following the PSC informal meeting (which preceded the PSC formal hearing). Hattem would like to know what was discussed. The PSC staff attorney recalls the discussion, recalls that several things were discussed in general, pertaining to procedural matters, including format of the scheduled formal hearing. The staff attorney reports that a staff meeting with the owners had been planned, the PSC informal proceeding had been adjourned, and the time and place of the meeting was simply a matter of convenience. PSC staff discussions with parties, including in private, are an entirely acceptable occurrence. Hattem has also had extensive discussions with PSC staff, which were also private and entirely appropriate.

On reconsideration Hattem also suggests that CHWC's lack of knowledge about the number of customers it serves demonstrates CHWC's lack of concern. The PSC agrees in part and disagrees in part. A public utility must know how many customers are connected to its system. If a utility does not know the customer numbers, there is a problem. However, the question of ownership of CHWC (which has now been resolved) has generated several problems regarding CHWC operations. One problem is that neither the prior owner (i.e., Gress), the interim owner (i.e., the estate), nor the present owner (i.e., Streeter, Jr.), felt compelled to commit to fulfill utility obligations in regard to utility operations while the question of ownership remained uncertain. It appears to the PSC that one of the problems falling in such category is assessment of the number of customers on the CHWC system. That problem is one of the many that will be corrected.

Hattem also argues that the PSC should not take the CHWC owners' or their consultant's word on matters and doing so is an insult to the customers. The PSC disagrees. There was no legal challenge to any witness's credibility at hearing. In the absence of such challenge and a ruling on the same, the testimony of witnesses is accepted and assigned weight as determined by the presiding officer. The PSC's decision, as expressed in Order No. 6132, reflects the weight assigned by the PSC to the testimony of the customers, the owners, the consultant, and the public officers testifying at hearing.

Hattem also argues that the PSC must review and approve a plan for correcting the problems with CHWC's system. The PSC disagrees. Planning is a management function. Public utilities are generally obligated to manage themselves. The PSC generally does not manage public utilities and sees no reason to attempt to manage CHWC at this time. However, as previously ordered, CHWC will file progress reports with the PSC. The PSC will monitor and review CHWC management decisions and the effect those decisions have on adequacy of service.

On reconsideration Hattem also argues that the CHWC system should be given to the customers and the PSC should hear a proposal by the customers regarding customer ownership and operation of the system. At the present time, such action would be inappropriate. CHWC is a privately owned utility system providing service to the public within its service area. The government cannot remove private property, even when dedicated to public service, from its owners without a legal basis for doing so. All factors considered, an attempt to remove CHWC from its present owners would be unjustified at the present time and the success of such effort would be doubtful. Additionally, if the government were to attempt to undertake such task, the CHWC customers are likely not the next in line to control CHWC, as CHWC has a former owner (i.e., Gress), contractually interested in ownership of CHWC.

CHWC has significant problems which affect service to its customers. Those problems have existed to some extent for some time, but most immediately, the cause of the problems becoming clearly unacceptable seems to be the uncertainty regarding ownership of CHWC. Now that the ownership question has been resolved the problems must begin to be eliminated and that process must continue until CHWC is providing adequate service. The PSC expects that the problems will be eliminated in a reasonable time. If they are not, the PSC will consider the legal options available to it at that time and those options may include changes in ownership of CHWC.

1. In summary, the serious problems which have been described by the customers require prompt attention, not further delay. The approach taken by the PSC in Order No. 6132 will turn all parties' attention to resolving problems and improving service. The PSC will monitor progress. If progress is not forthcoming, further appropriate action will be taken.

Done and dated this 20th day of January, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chair

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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GARY FELAND, Commissioner

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BOB ROWE, Commissioner and Presiding Officer

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)